

Session Outline
Gravel and Surface Minerals: State of the Law and Working Lands Easements

Friday, September 8 | 10:30 a.m. - noon

Session Description:

Whether and how to allow gravel or other surface mineral extraction on conservation easement properties has long been a challenge for easement drafting, particularly on working lands easements where a small on-ranch gravel source is considered necessary for agricultural and general land management purposes. Federal tax law prohibits “surface mining” of any kind for tax-deductible conservation easements, but whether this overarching statement is broad enough to include limited, localized, small non-commercial gravel extraction has been the source of significant debate in the land trust world. This session will review the available legal authorities, including statutory and regulatory provisions from the conservation easement context; case law on tax-deductible conservation easements from *Great Northern Nekoosa* through the recent *Cattail Holdings, LLC*, the varying approaches to minerals and surface interests taken under state laws, the interplay between surface mining and conservation purposes, surface mining as a pre-existing use, and the recent IRS Chief Counsel memorandum. LTA’s Practical Pointer on this issue will be explored in depth. With this background established, the session will introduce the broader landscape of land trust practices in this area, both historic and in response to current developments, and help land trust staff and their attorneys consider paths forward in the face of uncertainty.

Outline

- I. Introduction
- II. Review of available legal authorities
 - A. Statutory and regulatory provisions from the conservation easement context
 - B. Case law on tax-deductible conservation easements: from *Great Northern Nekoosa* through the recent *Cattail Holdings, LLC*
 - C. Varying approaches to minerals and surface interests taken under state laws
 - D. Interplay between surface mining and conservation purposes, with a focus on working lands easements
 - E. Surface mining as a pre-existing use
 - F. The recent IRS Chief Counsel memorandum
- III. Practical application – can working lands easements allow for limited and localized gravel extraction?
 - A. Introduction of the broader landscape of land trust practices in this area
 - B. Historic approaches
 - C. Approaches in response to current developments
 - D. Considering paths forward in the face of uncertainty

Document list

1. *Great Northern Nekoosa Corporation v. United States*, 38 Fed. Cl. 645 (1997)
2. *Cattail Holdings, LLC v. Commissioner*, T.C. Memo. 2023-17 (2023)
3. *North Donald LA Property, LLC v. Commissioner*, T.C. Memo. 2023-50 (2023)
4. IRS Chief Counsel Memorandum No. 202236010 (Sept. 9, 2022)
5. Internal Revenue Code § 170(h) [specifically, subsections (5) and (6)]
6. IRS regs: 26 C.F.R. § 1.170A-14 [specifically, subsections (e)(3), (g)(4), and (h)(5)]
7. LTA Practical Pointer: “Easement donation disqualification for reserved rights of surface mining methods” (last revised Jan. 11, 2023)